
Governor's Small Business Regulatory Review Board

September 8, 2008

Senator Jon Erpenbach, Chair
Senate Committee on Health and Human Services
Room 8, South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: Proposed HFS 35 Administrative Rule
CR 06-080, Outpatient Mental Health Clinics

Dear Senator Erpenbach:

Wisconsin 2004 Act 145 created the Small Business Regulatory Review Board (SBRRB) to serve as a voice for small businesses as defined in Wis. Stats. 227.114(1). The SBRRB's statutory authority for review of proposed rules is contained in Wis. Stats. 227.14(2g) and provides that an agency shall submit the proposed rule and the small business impact analysis to the SBRRB when the agency determines that the impact of that rule has a significant impact on small business. As Chairman of the SBRRB, I am submitting comments on this rule because of the Board's concern with respect to the Department of Health Services' (DHS) compliance with the administrative rulemaking requirements of Wis. Stats. 227.14(2g) as they related to proposed HSF 35.

On August 27, 2008, the SBRRB received testimony from small business owners who represent the interest of clinical social workers in the National Association of Social Workers (NASW) and the Wisconsin Association of Clinical Social Workers (WACSW). In consideration of the testimony received by SBRRB, the Board determined that the department's small business economic impact analysis did not adequately compare the regulatory impacts on the differing sizes and types of small businesses affected by the rule. In doing so, the significant economic impact of this rulemaking on many small clinics and solo practitioners was not accurately reflected in the department's analysis of economic impact on small business.

The SBRRB finds DHS failed to appreciate and analyze the economically burdensome nature of this regulation on the small clinics and solo practitioners. Additionally, DHS failed to examine whether or not reasonable alternatives existed which would help mitigate the burdensome nature of the rule on these small businesses. The SBRRB appreciates that DHS performed an initial regulatory flexibility analysis.

The SBRRB requests that the Senate Committee on Health, Human Services, Insurance and Job Creation give consideration to the issues raised herein and encourage DHS to better analyze the possible effects of this regulation on the small clinics and solo practitioners as statutorily required.

On behalf of the SBRRB, I appreciate the Senate Committee on Health, Human Services, Insurance and Job Creation consideration of the impact of the rule on small business.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Petershack". The signature is fluid and cursive, with a large initial "R" and "P".

Richard E. Petershack, Chairman
Governor's Small Business Regulatory Review Board

Cc: Karen Timberlake, DHS Secretary
Rea Holmes, DHS Executive Assistant
John Easterday, DHS Director Bureau of Mental Health and Substance Abuse Services
Pat Cooper, Small Business Regulatory Review Board
Rosie Greer, DHS Small Business Regulatory Review Coordinator
Ron Sklansky, Joint Legislative Council